TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~480.~~ 262

THE UNITED STATES, APPELLANTS,

vs.

EDWARD W. WILCOX, FOR THE USE OF THE PARKERSBURG BRANCH OF THE NORTHWESTERN BANK OF VIRGINIA.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 12, 1871.

Dec. 1871

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1 *Petition.—Filed M'ch* 23, 1868.

In U. S. Court of Claims, December term, 1867.

E. W. WILCOX, FOR THE USE OF THE PARKERSburg branch of the Northwestern Bank of Virginia,
vs.
THE UNITED STATES. } 3125.

To the honorable Court of Claims:

Your petitioner, E. W. Wilcox, who sues for the use and benefit of the Parkersburg branch of the Northwestern Bank of Virginia, respectfully represents unto your honors:

That, in the year A. D. 1864, he was a resident of the State of West Virginia, which comprised a portion of the Military Department of West Virginia, then commanded by Major General David Hunter, United States Army; that said Gen. Hunter, in the month of July, in said year, being in great need and want of horses for the service of the Army of the United States, and unable, by reason of the exigencies of the public service, to await the usual and ordinary routine for the procuring of horses, ordered his chief quartermaster to procure immediately all the horses he could, not exceeding two thousand, and authorized him to pay the sum of one hundred and sixty five dollars ($165 00) per horse; that, in accordance with said order, the quartermasters under Gen. Hunter proceeded to purchase horses, and bought of and from your petitioner seven hundred and sixty-eight horses, and contracted for the delivery of said number of horses, and promised and agreed to and with your petitioner that the defendant, the United States, should pay unto your petitioner the sum of one hundred and sixty-five dollars ($165) per horse, and the full and true sum of one hundred and twenty-six thousand seven hundred and twenty dollars, ($126,720,) and under said promise
2 and agreement, your petitioner delivered unto the said quartermaster the said seven hundred and sixty-eight (768) horses, receiving vouchers therefor at the rate of one hundred and sixty-five dollars ($165) per horse, amounting in the aggregate to one hundred and twenty-six thousand seven hundred and twenty dollars, ($126,720 00.)

Your petitioner avers that there were great and pressing necessities of the public service, requiring the immediate purchase and delivery of the said two thousand horses, insomuch that the first thousand were required by the commanding general to be purchased in seven days, and the second thousand immediately.

Your petitioner further avers that Gen. Hunter and his quartermasters in the matters aforesaid, were acting as the officers and agents of the defendant, the United States, and within the scope of their authority as commanding general of a department and quartermasters under him, and the said horses were delivered to them, as such officers and agents, and by them so received and converted to the use of, and used by, the said defendant, and were never rejected or returned, or offered to be returned to him by said defendant.

He further avers that he purchased many of these horses, sold and delivered as aforesaid, he not being at that time the owner of so great a number as seven hundred and sixty-eight horses; that to do this he was compelled to have facilities for the raising of money for the purchase of the said horses; that he accordingly entered into an arrangement with the Parkersburg branch of the Northwestern Bank of Vir-

ginia, to furnish him money to purchase said horses, and to receive from him the vouchers to be issued to him in payment; that, in accordance with said arrangement, the said bank did furnish him a certain amount of money, which, with what he himself had, enabled him to purchase horses to the number above described as sold to the defendant, and for which he received vouchers.

That, in accordance with the arrangement aforesaid, your petitioner sold and delivered the said vouchers to the amount of one hundred and twenty-six thousand seven hundred and twenty dollars ($126,720 00) to said bank; that the same was done without endorsement, assignment, or transfer, other than by delivery, as was the common custom in the United States, recognized and acknowledged by the said defendant from time immemorial.

Your petitioner further avers that the said bank presented said vouchers to the Quartermaster General of the United States for payment; that the Quartermaster General for a long time refused to
3 pay them, but finally, after the lapse of nearly a year, agreed to pay and did pay, the sum of one hundred and fifty dollars ($150 00) per horse, or the sum of one hundred and fifteen thousand two hundred dollars, ($115,200 00,) instead of one hundred and twenty-six thousand seven hundred and twenty dollars, ($126,720 00,) the true amount of said vouchers as issued to your petitioner.

That, besides the money advanced as aforesaid to your petitioner, the said bank did, about the same time, advance large sums to other persons to enable them to furnish horses to supply the demand of Gen. Hunter, receiving in the same manner vouchers therefor; so that of said vouchers, said bank held the amount of one hundred and fifty-five thousand five hundred and ninety-five, ($155,595 00.)

That its own capital being but one hundred thousand dollars, in order to make said advances it was compelled to borrow a large sum of money in New York, and to pay expressage on the same to Parkersburg.

That it did this through patriotic motives, in order to relieve the Government in a time of great emergency, when the cavalry force of the United States in the department, exhausted by a recent arduous campaign, were almost destitute of horses; when a large and victorious rebel force were advancing through Virginia and Maryland and threatening the national capital; when the public funds of the quartermaster's department of the Department of West Virginia were, and had for a long time been, exhausted, and it was impossible for Gen. Hunter to procure an adequate number of horses in any other way.

That the bank having "carried" the large amount aforesaid for nearly a year, was unable to carry it any longer without financial ruin, and accordingly accepted the offer of the Quartermaster General, and received the sum of one hundred and fifty dollars ($150) per horse, without giving any receipt, bond, or obligation waiving any right to recover the balance.

Your petitioner avers that his vouchers were for the sum of one hundred and twenty-six thousand seven hundred and twenty dollars, ($126,720 00;) that there was received by said bank on said vouchers, the sum of one hundred and fifteen thousand two hundred dollars ($115,200 00) only, and that there is still due and owing to your petitioner, for the use and benefit of said bank, the sum of eleven thousand five hundred and twenty dollars ($11,520.)

He avers, that he is a citizen of the United States; that the
4 said bank is a corporate body, under and by virtue of the laws of Virginia, made and done before the rebellion; that its stockhold-

ers are citizens of the United States, and that neither he nor the stockholders or officers of said bank, have in any way voluntarily aided, abetted, or given encouragement to any rebellion against the Government of the United States, but have always borne true allegiance thereto.

He prays judgment for the said sum of eleven thousand five hundred and twenty dollars ($11,520.)

OWEN & WILSON,
Attorneys for Plaintiff.

STATE OF WEST VIRGINIA, *County of Wood, ss:*

William H. Wolfe personally appeared before me, W. W. Van Winkle, a duly qualified notary public for the county and State aforesaid, and made oath that during the years 1862, 1863, and 1864, he was teller of the Parkersburg branch of the Northwestern Bank of Virginia; that Beverly Smith, who was cashier of the said bank during said time, has since become deceased; that he is well acquainted with the voucher transactions mentioned in the foregoing petition, and that to the best of his knowledge and belief, no assignment or transfer of the claim set forth in the foregoing petition, or any part thereof, or any interest therein, has been made, except as therein stated; that said claimant is justly entitled to said amount therein claimed from the United States, after allowing all just credits and offsets, and believes the facts therein stated, to be true.

W. H. WOLFE.

Sworn to and subscribed before me on this 12th day of February, in the year 1868. Given under my hand and official seal, on the day and year aforesaid.

[L. S.] W. W. VAN WINKLE,
Notary Public.

STATE OF WEST VIRGINIA, *Wood County, ss:*

I, William H. Hatcher, clerk of the circuit court of said county, hereby certify that W. W. Van Winkle, esq., whose genuine signature is annexed to the foregoing certificate, was at the date thereof a notary public within and for said county, duly commissioned and sworn, having full power and authority by law to administer oaths and take acknowledgements. In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at Parkersburg, the 13th day of February, 1868.

[L. S.] W. H. HATCHER, *Clerk.*

5 In the United States Court of Claims, December term, A. D. 1867

EDWARD W. WILCOX, FOR THE USE, *cs.* THE UNITED STATES } No. 3125.

And the said defendants, by their solicitor, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of

eleven thousand five hundred and twenty dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN J. WEED,
Assistant Solicitor for the United States.

Filed May 12, 1868.

6 In the Court of Claims of the United States, Dec. term, 1869.

EDWARD W. WILCOX
vs.
THE UNITED STATES. } No. 3125.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and, by leave of court, (as expressed in Rule IX,) say that the said claimant ought not further to maintain said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an executive department, the petition does not set forth the decision thereon of the proper department of the Government to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

Filed Jan'y 14, 1870.

7 In the Court of Claims.

EDWARD W. WILCOX, FOR THE USE OF THE Parkersburg branch of the Northwestern Bank of Va.,
vs.
THE UNITED STATES.

And now, to wit, 14th of February, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Edward W. Wilcox have, and recover of and from the United States the sum of ten thousand five hundred & sixty dollars no cents, ($10,560 00.)

By the court:

A true copy of record.

8 In the Court of Claims, Dec. term, 1869.

EDWARD W. WILCOX, FOR THE USE OF THE Parkersburg branch of the Northwestern Bank of Va., vs. THE UNITED STATES. } 3125.

From the judgment rendered in the above-entitled cause of February 14, 1870, in favor of the claimant, the defendants, by their Att'y General, on this 20th day of April, 1870, make application for and give notice of an appeal to the Supreme Court of the United States, the amount in controversy therein exceeding three thousand dollars.

By the Ass't Att'y General:

THOMAS H. TALBOT.

Filed in the clerk's office April 20, 1870.

Ordered, that the appeal prayed in the case of Edward W. Wilcox, for the use &c., vs. The United States, be allowed.

By the court:

APRIL 26, 1870.

9 IN THE CASE OF EDWARD J. WILCOX, FOR the use of the First National Bank of Parkersburg, West Va., vs. THE UNITED STATES. } 3125.

And the court finds the facts to be—

In July, 1864, Major Gen'l David Hunter, of the U. S. A., was in command of the Military Department of which West Va. was a part. To meet a pressing exigency he issued orders to his chief quartermaster, on the 7th July, 1864, to procure 1,000 horses within seven days. A board of officers was designated as inspectors of these horses. The orders limited the price to $165 per head. A similar order for an additional 1,000 horses was issued by Gen'l Hunter on the 13th of the same month, at the same price stated before. The quartermaster procured the claimant and others to deliver the horses. They were delivered within the time specified, or very shortly thereafter. The horses
10 delivered were all inspected by the officers detailed for that purpose, and accepted by them on behalf of the United States. Vouchers were then made out specifying that the claimant had delivered so many horses, at $165 per head, and carrying out in figures the aggregate; the certificate of the board of inspectors and the approval of the quartermaster added to the same. To the whole was added a receipt, with blanks left for date, and the name of the paying officers, stating the amount in words of the aggregate of the voucher at $165 per head for the horses. These receipts were signed by the claimant and others who delivered horses under these orders, and for each delivery separately. The vouchers, certificates of inspection, approval of the quartermaster, and receipts were all the same, varying only in amount, according to the number of horses delivered. Neither Gen'l Hunter nor his quartermaster had been furnished with money to pay for these horses. The parties to whom these vouchers had been given procured the money on them from the banks at Parkersburg, West Va., and various individuals, to pay for the horses to the farmers from whom

they were bought. The vouchers, with the receipts in full, appended, signed by the claimant and the other contractors, were handed
11 over to the banks and the individuals from whom the money had been procured, to enable them to draw it from the Treasury. Some of the vouchers were forwarded to Riggs & Co., and Jay Cooke & Co., and others sent direct to the Quartermaster Gen'l's Office for payment. Those sent to Riggs & Co. and Jay Cooke & Co. were also deposited in the same place for settlement and payment. They were referred to the cavalry division of that Bureau, and which reported that the price paid for the horses was too high, and stated that the market price of horses at that time was from $145 per head to $155. The Quartermaster Gen'l thereupon referred the matter back to the cavalry division, directing that the claims should, if practicable, be settled with the holders of these vouchers at $150 per head for the horses. The head of that division thereupon caused a deduction of $15 per head to be made. The vouchers being in his possession, the deduction was stated in red ink upon their faces—a new balance struck. He also caused the sums written in the receipts, at the bottom of the vouchers, to be erased, and interlined instead the reduced balance, after deducting $15 per head for the horses specified in the particular voucher. He then made out checks or drafts on the Treasury for these reduced sums, and sent or handed them to the holders of the vouchers, or their
12 agents. The payments were made at various times between the 23rd of May, 1865, and August 12th, 1865. During the time that the questions of the allowance of the vouchers was before the War Department, several officers of the banks owning part of these vouchers, as well as agents of the individual holders, demanded the payment and allowance of the vouchers, and protested against any reduction being made upon the same to the Quartermaster Gen'l and Secretary of War. They gave notice to those officers that any payments of less than the face of the original vouchers would only be received in part payment, and that they would look to Congress or the Court of Claims for the balance. Those officers concurred that they would not be barred of any just demand they had to claim the balance by the adjustment ordered in the Quartermaster General's Office.

The horses were purchased under a lawful order of an authorized officer of the United States during a pressing military exigency. The price paid was a fair and reasonable one, under the circumstances, and we find no fraud in the transaction, either on the part of the officers or claimants. We also find that the alterations in, and deductions
13 from, the vouchers, and the erasures and interlineations in the receipts were made after they were signed, without the consent or acquiescence of the holders. There is no proof in the record that the owners or holders of these vouchers, either expressly or impliedly, agreed to receive the reduced sums paid in full of their claims, but have always insisted upon payment of the entire sum.

We further find that the plaintiff, Edward J. Wilcox, sold and delivered into the First National Bank of Parkersburg, West Virginia, vouchers issued as aforesaid for 704 horses purchased, inspected, and received as aforesaid, under the authority as aforesaid; which vouchers amounted in the aggregate to $116,160 00 that the United States paid to the said bank, on account of said vouchers, the sum of $105,600 00 only, and refused to pay the balance; that there is now due and unpaid, on account of said vouchers, the sum of $10,560 00, for which we direct judgment to be entered in favor of the plaintiff, to the use of the First National Bank of Parkersburg, West Virginia.

By the court.

14 In the Court of Claims.

EDWARD W. WILCOX, FOR THE USE OF THE Parkersburg branch of the Northwestern Bank of Virginia,
vs.
THE UNITED STATES.
} No. 3125.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney General, for the defendants, for the allowance of an appeal, as filed in the clerk's office April 20, 1870, and of the order of the court of 26 April, 1870, allowing the same; of the finding of facts & conclusions of law on said facts, on which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 12th day of January, 1871.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 480. The United States, appellants, vs. Edward W. Wilcox, for the use of the Parkersburg branch of the Northwestern Bank of Virginia. Court of Claims. Filed 12th January, 1871.